

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2011-47-WS - ORDER NO. 2011-784  
OCTOBER 24, 2011

IN RE:	Application of Carolina Water Service,	)	ORDER DENYING
	Incorporated for Approval of an Increase in	)	APPLICATION FOR
	Its Rates for Water and Sewer Services	)	INCREASED RATES AND
	Provided to All of Its Service Areas in South	)	CHARGES
	Carolina	)	
		)	

**I. INTRODUCTION**

In Section 58-3-140(A) of the South Carolina Code, the General Assembly vested the Public Service Commission with “power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State.” This case presents the question of whether the Commission’s powers to determine “just and reasonable” rates include the power to deny a rate increase in its entirety where it deems the quality of the service provided by the utility to be unacceptable based upon the evidence in the record. We believe we are vested with the discretion to make such a finding and to reach such a result. Because the record in this case is replete with evidence of inadequate and unacceptable customer service by the utility, we believe that the Applicant, Carolina Water Service, deserves no rate increase, and we therefore deny its request for rate relief in its entirety.

The South Carolina Supreme Court, in *Patton v. South Carolina Pub. Svc. Comm'n*, 280 S.C. 288, 312 S.E.2d 257 (1984), held that in exercising its regulatory power, “the Commission must be allowed the discretion of imposing reasonable requirements on its jurisdictional utilities to insure that adequate and proper service will be rendered to the customers of the utility companies. . . . ‘The quality of service rendered is, necessarily, a factor to be considered in fixing the ‘just and reasonable’ rate therefor.’” 280 S.C. at 293, 312 S.E.2d at 260, *quoting, State of North Carolina ex rel. Utilities Commission v. General Telephone Co. of the Southeast*, 285 N.C. 671, 681, 208 S.E.2d 681, 687 (1974). The North Carolina Supreme Court, in *General Telephone*, affirmed the North Carolina Utilities Commission’s denial of a rate increase in a case very similar to the one now before us. The North Carolina court presented the issue as follows:

The crucial question upon this appeal is: When, upon substantial evidence, a public utility is found to be rendering grossly inadequate service, due to bad management and managerial indifference, and the rates presently charged by it yield a return sufficient to pay the interest on its indebtedness and a substantial dividend upon its stock, but less than that which would be deemed a fair return upon the fair value of its properties were the service adequate, may the Utilities Commission lawfully deny it authority to increase its rates for such service? The answer is yes.

285 N.C. at 679-80, 208 S.E.2d at 686. The court elaborated:

Obviously, it was not the intent of the Legislature to require the Commission to fix rates without any regard to the quality of the service rendered . . . .

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It is not reasonable to construe [the law] to require the Commission to shut its eyes to ‘poor’ and ‘substandard’

service resulting from a company's willful, or negligent, failure to maintain its properties or to heed complaints from its subscribers when the Commission is called upon by the Company to permit it to increase its rates for its inadequate service.

285 N.C. at 681-83, 208 S.E.2d at 687-88 (1974).

Similar results were reached by the Commonwealth Court of Pennsylvania in *National Utilities, Inc. v. Pennsylvania Pub. Util. Comm'n*, 709 S.2d 972 (1998) (total denial of water utility's application for rate increase on basis of poor service did not violate takings or due process clauses of Fifth and Fourteenth Amendments to U.S. Constitution) and by the Superior Court of New Jersey in *Matter of the Petition of Valley Road Sewerage Company*, 666 A.2d 992 (1995) (total denial of sewer utility's application of rate increase on basis of chronic financial mismanagement, overdue gross receipts and franchise taxes, and repeated environmental violations was a practical method of compelling the utility to remedy deficiencies and was within the discretion of the Board of Regulatory Commissioners).

We are aware of the South Carolina Supreme Court's most recent utility rate decision in *Utilities Services of South Carolina, Inc. v. South Carolina Office of Regulatory Staff*, 392 S.C. 96, 708 S.E.2d 755 (2011), reversing our order therein denying rate relief. However, we do not believe the USSC decision explicitly holds that this Commission is without the power and jurisdiction to issue a complete denial of a rate increase request where the evidence demonstrates that the service delivered by the utility is simply unacceptable. Absent instruction by the General Assembly or the Supreme Court to the contrary, we in the majority decline to hold that the current law compels

such a result. *Patton* instructs us that quality of service must be considered in setting just and reasonable utility rates. Based on quality of service concerns, the facts in this case demonstrate ample justification for denial of the Company's application.

## **II. SUMMARY OF PROCEEDINGS**

Carolina Water Service, Inc., ("CWS" or "the Company") filed an Application with the Commission on April 15, 2011, seeking approval of a new schedule of rates and charges for water and sewer service that CWS provides to its customers within its authorized service areas in South Carolina. The Application was filed pursuant to S.C. Code Ann. Section 58-5-240 and 26 S.C. Code Ann. Regs. 103-712.4.A and 103.512.4.A.

By letter dated April 26, 2011, the Commission's Docketing Department instructed CWS to publish a prepared Notice of Filing, one time, in newspapers of general circulation in the area affected by CWS's Application. The Notice of Filing described the nature of the Application and advised all interested persons desiring to participate in the scheduled proceedings of the manner and time in which to file appropriate pleadings for inclusion in the proceedings as a party of record. In the letter of April 26, 2011, the Commission also instructed CWS to notify directly, by U.S. Mail, each customer affected by the Application by mailing each customer a copy of the Notice of Filing. CWS filed Affidavits of Publication demonstrating that the Notice of Filing had been duly published and provided a letter certifying that it had complied with the

instructions of the Commission's Docket Department and mailed a copy of the Notice of Filing to all customers.<sup>1</sup>

In response to the Notice of Filing, Petitions to Intervene were filed on behalf of the *Forty Love Point Homeowners' Association ("HOA")* and Midlands Utility, Incorporated ("Midlands"). A Petition to Intervene dated May 26, 2011, by Mr. Trent Muldrow, a customer of CWS, was forwarded by counsel for CWS to the Commission after the deadline.<sup>2</sup> Pursuant to S.C. Code Ann. § 58-4-10(B) (Supp. 2010), the South Carolina Office of Regulatory Staff ("ORS") is a party of record.

In addition to the scheduled hearing during normal Commission hours, the Commission held three public night hearings pursuant to Orders No. 2011-387, 2011-417, 2011-432, and 2011-532.<sup>3</sup> Under these Orders, public hearings were set and noticed by the Commission, and the Company provided affidavits certifying that it had provided notice to its customers via U.S. Mail of the date, time and location of the local public hearings. On July 13, 2011, the Commission held a night hearing in Lexington, South Carolina. A total of twenty-one (21) public witnesses testified at the hearing. On August 4, 2011, the Commission held a night hearing in Lake Wylie, South Carolina. A total of twenty-three (23) public witnesses testified at the hearing. On September 7, 2011 beginning at 6 p.m., the Commission held a night hearing in the Commission's hearing room located at Synergy Business Park, 101 Executive Center Drive – Saluda Building,

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<sup>1</sup> By directive dated June 24, 2011, the Hearing Officer recommended the Commission accept the late filed affidavits.

<sup>2</sup> Mr. Muldrow never filed a Petition to Intervene with the Commission, but later testified as a public witness.

<sup>3</sup> The purpose of the night hearings was to provide a forum, at a convenient time and location, for customers of CWS to present their comments regarding the service and rates of CWS.

Columbia, South Carolina. A total of eleven (11) public witnesses testified at the September 7<sup>th</sup> night hearing.

On September 7, 2011, and September 8, 2011 the Commission, with Chairman Howard presiding, heard the matter of CWS's Application.

At the outset of the hearing held September 7, 2011, the Commission again heard testimony from public witnesses. A total of eight (8) public witnesses testified.<sup>4</sup> The public hearing reconvened for closing arguments on September 19, 2011 and concluded.

During the proceedings, CWS was represented by Charles L.A. Terreni, Esquire and Scott Elliott, Esquire. The HOA was represented by Laura P. Valtorta, Esquire. Midlands was represented by Charles Cook, Esquire. ORS was represented by Nanette S. Edwards, Esquire and Jeffrey M. Nelson, Esquire.

At the hearings held September 7 and September 8, CWS presented the testimony of Pauline M. Ahern (Principal of AUS Consultants), Lisa Sparrow (President and Chief Executive Officer of Utilities, Inc.)<sup>5</sup>, Steven M. Lubertozzi (Executive Director of Regulatory Accounting and Affairs at Utilities, Inc.), Kirsten Weeks (Manager of Regulatory Accounting at Utilities, Inc.), Patrick C. Flynn (Regional Director at Utilities, Inc.), Bob Gilroy (Regional Manager for CWS and Utilities, Inc.), and Karen Sasic (Director of Customer Care at Utilities, Inc.). Additionally, the Company presented the testimony of Mac Mitchell (Regional Manager for CWS and Utilities, Inc.)

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<sup>4</sup> In total, 63 public witnesses testified in the case, all of whom opposed the Company's requested rate increase.

<sup>5</sup> CWS is a subsidiary of Utilities, Inc.

The HOA presented the testimony of Kim Nowell, Frank Rutkowski, and Nancy Williamson concerning service and quality problems experienced by Forty Love homeowners. Midlands presented the testimony of Keith G. Parnell in support of a Settlement Agreement reached between CWS and Midlands. The Settlement Agreement was submitted to the Commission at the start of the hearing on September 7, 2011.

The prefiled direct and surrebuttal testimonies of ORS witnesses Dr. Douglas H. Carlisle, Jr. (Economist), Sharon G. Scott (Senior Manager for Rate Cases), Dawn M. Hipp (Director of Telecommunications, Transportation, Water and Waste Water Departments), and Willie J. Morgan, P.E. (Program Manager of Water and Waste Water Department) were stipulated into the record on September 8, 2011 without objection.

The Commission appointed B. Randall Dong, Esquire, as hearing officer in Order No. 2011-346 to dispose of procedural and evidentiary matters. ORS filed a Motion to Admit Documentary Evidence on August 30, 2011, seeking to admit the transcript of the hearing in Docket No. 2010-146-WS. After hearing arguments on the Motion, the Commission ruled it would take judicial notice of Docket No. 2010-146-WS, its pleadings and its orders.

### **III. FINDINGS OF FACT**

1. CWS's South Carolina operations are classified by the National Association of Regulatory Utility Commissioners ("NARUC") as a Class A water and wastewater utility. The Commission approved service area for CWS includes portions of Aiken, Beaufort, Georgetown, Lexington, Orangeburg, Richland, Sumter, Williamsburg, and York counties. Its operations are subject to the

jurisdiction of the Commission, pursuant to S.C. Code Ann. Section 58-5-10, *et. seq.* (1976), as amended.

2. The appropriate test year period for this proceeding, selected by the Company, is October 1, 2009 through September 30, 2010.
3. The evidence presented in this case demonstrates that the Applicant failed repeatedly to bill its customers regularly and accurately for its services. While some improvements have been made, billing and collection problems have persisted.
4. Many customers testified about significant problems with the quality of the water delivered by the Applicant. Their testimony indicated that their water often is discolored, smells bad, tastes bad, and stains clothes and plumbing fixtures. Some customers reported that the water has ruined plumbing fixtures and household appliances. Some customers spend significant funds for water filtration or treatment equipment. Others drink only bottled water.
5. Some customers report sewer problems and inadequate response to service calls seeking remedies.
6. Some customers report generally poor or unresponsive customer service from the Company's out-of-state customer service call centers, and complain of having no customer service personnel physically present in the State of South Carolina.
7. Current revenues collected under the existing schedule of rates and charges afford the Company a positive return on rate base and rate of return on equity.



#### **IV. EVIDENCE SUPPORTING FINDINGS OF FACT**

##### **Billing Problems**

ORS Witness Dawn Hipp testified that CWS has frequently failed to issue timely or accurate bills to its customers. (Hipp, T. Vol. 5, 1274) Witness Hipp further testified that ORS conducted a Business Office Compliance Review to ensure that CWS complied with Commission regulations. Of the 22 components reviewed by ORS, CWS was out of compliance in five (5) areas: deposits, timely and accurate billing, customer bill forms, customer billing adjustments, and notices filed with the Commission. (Hipp, T. Vol. 5, 1273; Exhibit 43) ORS detected the following types of billing errors during the Company's test year: (1) no monthly bill or delayed monthly bill; (2) 60-90 day delay between the service period and bill date; (3) estimated meter readings used in two consecutive billing periods without customer approval; and (4) bills not in compliance with the approved rate schedule. (Hipp, T. Vol. 5, 1274)

In addition, ORS detected the following types of bill form deficiencies: (1) no meter readings; (2) no distinct markings identifying bills as estimated; (3) no meter number; and (4) no rate or statement that the applicable rate schedule would be furnished upon request. (Hipp, T. Vol. 5, 1275) Witness Hipp also testified that from ORS's review of CWS customer bills, ORS determined that CWS was not making adjustments to customer bills in accordance with Commission regulations. (Hipp, T. Vol. 5, 1275) CWS had failed to bill some new customers for service. In one case, the customer received free service for more than a year. When the error was discovered, CWS issued a bill to the customer for a time period that exceeded the six (6) months allowed by the

Commission regulations. While CWS stated that the “account was billed for unbilled service they [the customer] acknowledged using during this time period,” the practice of making a billing adjustment which exceeds the maximum time period is not in compliance with Commission regulations. (Hipp, T. Vol. 5, 1275)

Over 20 CWS Customers testified regarding the billing problems that they have experienced. Witness Bartina Edwards and Witness Teresa Berenyi testified at the Lake Wylie night hearing that the rate at which the Company billed them for water increased without an explanation. (Edwards, T. Vol. 2, 178; Berenyi, T. Vol. 2, 210-11) Witness Berenyi added that her water rates increase and decrease on a quarterly basis. (Berenyi, T. Vol. 2, 210-11) Witness Winston Martinez testified at the Lake Wylie night hearing that he received a \$500 bill for a period of time during which the home was vacant. (Martinez, T. Vol. 2, 230) Witness Charity Kimmel testified that she experienced the same kind of problems. (Kimmel, T. Vol. 2, 257) Witness Jay Moore testified at the Lake Wylie night hearing that he was billed for 2,640 gallons in June 2011 when his home was vacant for 23 days and the water valve was turned off. (Moore, T. Vol. 2, 261) Witness Abigail “Missy” Myers testified at the Lake Wylie night hearing about the inconsistencies in the bills she received from CWS. (Myers, T. Vol. 2, 282-83) She testified that the usage stated in her March 30, 2011 bill was 6,560 gallons while the usage stated in her April 2011 bill was 30,020 gallons. Similarly, the usage stated in her March 2010 bill was 4,600 gallons while the usage stated in her April 2010 bill was 32,290 gallons. Four months later, in August 2010, her usage was reported as 103,810 gallons. (Myers, T. Vol. 2, 282-83)

Witness Jeff Jordan testified at the Lexington night hearing that he has received inaccurate bills and more than one bill in each month. (Jordan, T. Vol. 1, 26) Witness Chris Gordon testified at the Lexington night hearing that over the course of one year, the Company failed to bill him for two months and “double billed” him on two occasions. (Jordan, T. Vol. 1, 35) Witnesses Jay Pittman and Lynn Moseley testified at the Lexington night hearing that the Company has failed to bill them on some occasions and “double billed” them on others. (Pittman, T. Vol. 1, 75; Moseley, T. Vol. 1, 95) Tim Anderson, a high school teacher, referred to his billing as “sporadic” as he received a bill for \$150.00, then no bill, and then he received a statement reflecting he owed \$0, and then he received a bill for \$100.00 along with a shut-off notice. (Anderson, T. Vol. 1, 64, ll. 10-25; 65) <sup>6</sup> Witness Leland Sullivan testified that he had recently received two bills for the same service period of April 27 to May 27, 2011; he stated that billing skipped a month and would be followed by two months’ billing, and that this happened repeatedly. (Sullivan, T. Vol. 1, 80, ll. 16-24; 81 and Hearing Exhibit 6) Mr. Sullivan explained there are delays between the dates of service and when he receives the bill such that he cannot check against his meter and he would not know what he used during that time period. (Sullivan, T. Vol. 1, 84)

Witness Donna Forest testified that although she automates payment, she was sent a shut-off notice meaning that her service would be terminated for non-payment. (Forest, T. Vol. 1, 89, ll. 12-22).

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<sup>6</sup> Mr. Anderson noted that he does receive the warranty advertisement jointly marketed by Utilities, Inc., and HomeServe each month. (Anderson, Lexington Night Hearing, T. 65)

Witness Julia Hess resides at 111 Marianne Court; she testified that her bills range from \$65.00 to \$200.00. For a period of six months, her bills were posted to the wrong account. She received late fees but paid them rather than “duke it out over a few dollars.” She provided her bills, correspondence from the Company, correspondence with ORS, several marketing materials from Utilities, Inc., and HomeServe, the ORS Report of July 30, 2009 for Courtside Commons, and other documentation which the Commission accepted as Hearing Exhibit 8. (Hess, T. Vol. 1, 96-100)

Ms. Hess’ substantial documentation supported her testimony. A bill dated 05/13/2009 to 111 Marianne Court but referencing another customer is provided at Page 16 of Exhibit 8. Pages 56-58 of Exhibit 8 reflect that Ms. Hess has had to repeatedly request reimbursement for overbilled amounts. Most instructive, correspondence from Carolina Water Service to Ms. Hess dated January 28, 2010 provides as follows:

*Since the transition to our new Customer Care and Billing System (CC&B) in mid-2008, some areas have experienced a delay in receiving a monthly bill.* In addition, due to issues related to the timely receipt of the bulk provider invoice, your current bill may reflect a service period which may have occurred several months earlier. In order to "catch-up" the billing and bring the service period as close to the current bill date as we can, your upcoming monthly bill in February will reflect a 2-month billing.

As you may be aware, the water service provided to your residence by Carolina Water Service, Inc. is purchased through a bulk provider and the costs passed through to you, without mark-up, on a "pro-rata" basis. The rate for this pass-through amount fluctuates each month and is based upon the total amount of bulk water purchased from the provider divided proportionately among the customers in the service area and based on your actual consumption during that same service period.

(Emphasis added, T. Vol. 1, Exhibit 8 page 45)

Witness Kimberly Stammire testified that although she did not receive a bill, she was disconnected for nonpayment. She also described her billing as “sporadic.” (Stammire, T. Vol. 1, 104-109)

Witness Kecia Harley provided detail regarding the sporadic nature of the billing and described her experiences with the Company estimating rather than reading her meter. She complained that she is not billed on a regular thirty (30) day cycle; instead she has been billed for as much as forty-three (43) or as little as sixteen (16) days. (Harley, T. Vol. 1, 129-134; 132)

Witness Steve Weston described his frustrations with the Company at the Lexington night hearing. (Weston, T. Vol 2, 121-24) Mr. Weston asked CWS to turn on the water at three vacant properties that he owns, so that he could prepare them for tenants. He testified that he asked the Company to send the bills to his address and not to the vacant properties. He never received a bill for this water service and later learned that the Company had sent the bill to the vacant properties. The bills were intercepted by Mr. Weston from his tenants. The Company charged Mr. Weston late fees and threatened to shut off the water to the tenant’s properties. The same situation occurred to Mr. Weston with another property in May 2010. In that case, Mr. Weston had informed the Company that he had turned the meter off at one of his vacant properties, and he requested a final bill. He never received a final bill. When he requested the water be turned on for a new tenant several months later, he was told that the Company would not reinstate service

because he had an unpaid bill in the amount of \$900. That charge was the result of usage attributed to his property from a water line that had burst. Mr. Weston and the Company eventually settled the charge at \$500. (Weston, T. Vol 2, 121-24)

At the Lake Wylie night hearing CWS customers, Pam Horack and Don Long, testified regarding the billing errors they discovered. After reviewing her bills and making two phone calls to the Company, Ms. Horack learned that she was overbilled the base water charge, which is a flat monthly amount, because the Company had not read the meter but pro-rated the monthly charge. (Horack, T. Vol 2, 214; 218-219; Hearing Exhibit 14) Mr. Long expended significant time and resources reviewing bills from May of 2008 to present. He found that the May 2008 bill correctly reflected a York County water supply charge of \$3.26 per thousand gallons and a \$.15 York County water base charge. When CWS implemented its new billing system in June of 2008, the June 2008 bill mistakenly added the \$.15 base charge to the \$3.26 supply charge and calculated the supply charge as \$3.41 per thousand gallons. Thus, \$.15 was charged once per each thousand gallons rather than once per month, as it should have been. Importantly, the \$3.41 per thousand was not detailed on the bill.

Mr. Long found that in July of 2008, the supply charge was detailed on the bill as \$3.41 per gallon, rather than the correct and authorized charge of \$3.26. In October of 2008, the supply charge was more detailed, but it was still incorrect, because the correct supply charge was still \$3.26 per thousand, plus \$.15. This error continued for 24 months, until October of 2010. In November of 2010, the detailed description of the supply charge was removed, and the calculation was corrected to reflect the proper

charge of \$3.26 per thousand gallons, plus the fixed \$.15. But, the total was still carried as a single item on the bill. This continued until May of 2011, when the \$3.26 per thousand gallons was detailed and the supply charge separated from the \$.15 base charge as it had been 31 months earlier, on the old billing form. He further testified that:

No refund was provided for the overcharge, nor was any error admitted. ... Clearly the error was known, but not acknowledged. It was known at least seven months before it was finally fixed, and even then no refund was provided and no acknowledgment was provided. In fact, the way in which the correction was made appears to have been designed to cover over the fact that a mistake had ever occurred. I asked an attorney friend of mine if there was a legal term for this. He simply said, "Stealing."

(Long, T. Vol. 2, 242-244; Hearing Exhibit 16)

Witness Roger Schwartz testified that for eighteen (18) months, he attempted to resolve a billing complaint with the Company. After involving ORS, a billing error of 60,000 gallons of usage for an empty, unused space was determined. He contended that the Company went eighteen (18) months using estimated billing. (Schwartz, T. Vol. 2, 292-293; 294-300)

Witness Miriam Berry testified before the Commission on September 7, 2011, in Columbia. She testified that the two month delay in billing resulted in her failing to catch a leak for a long period of time. She acknowledged that it is not the Company's fault she had a leak, but she would have caught the leak earlier if the Company's billing was not so far behind. (Berry, T. Vol.3, 319-321)

Witness William Brown testified that the billing problems are not billing problems but are management problems. He stated that a problem that is ongoing and repetitive is a management problem. (Brown, T. Vol. 1, 77)

The Company itself acknowledged that during the test year the Company did not provide timely and accurate bills to water distribution and wastewater collection customers. CWS Witness Sasic contended that the problems were due to a breakdown of internal billing processes, the failure of certain personnel to manage the manual billing process, delays in billing from bulk providers, and mail vendor issues. (T. Vol. 5, 1062-1070) The utility claims to have made improvements in its billing and collection practices, but we believe the problems have persisted at an unacceptable level.

#### **Water Quality Problems**

We also heard significant testimony concerning the odor and color of the water provided by the Company and the impact it has had on its customers' health, plumbing fixtures, household appliances, and finances. Witness Kim Nowell, called on behalf of Intervenor Forty Love Point Homeowners' Association, testified that her water is brown and smelly ("like rotten eggs"). (Nowell, T. Vol. 3, 373-74) Her family installed a sediment filtration system and spends \$20 each month changing the filters, but it has not alleviated the problem. (Nowell, T. Vol. 3, 373-74) Ms. Nowell provided the Commission with photos of the brown water in a white bowl and the brown stain that the water leaves on white bowls. (Nowell, T. Vol. 3, 379; Exhibit 22)

Forty Love Point Witness Nancy Williamson testified that her clothes smell after being washed in water supplied by CWS. (Williamson, T. Vol. 3, 389) Ms. Williamson



had her water tested and discovered the presence of iron bacteria in the water causing the foul smell and discoloration. (Williamson, T. Vol. 3, 392) Forty Love Point Witness Frank Rutkowski discussed the fear he experiences in being exposed to this water: “[Y]ou’re ingesting this water, and you wonder, ‘Is this safe for me and my family?’” (Rutkowski, T. Vol. 3, 217)

Witness Bartina Edwards testified at the Lake Wylie night hearing that her water was discolored, and she also bore the expense of installing a filtration system. (Edwards, T. Vol. 2, 178-79) Witness Jeff Jordan testified at the Lexington night hearing that he suffered from skin irritations on his arms and legs and that he had two disposals replaced as a result of the mineral content in the water. (Jordan, T. Vol. 1, 24-25) Witness Tom Callan testified at the Lexington night hearing that his water is odorous, “murky,” “truly brown,” and contains minerals resulting in failed appliances, the need to replace showerheads, and damaged laundry and hair. (Callan, T. Vol. 1, 54-55) Witness Donna Forrest testified at the Lexington night hearing that because of the poor water quality she does not use any water that is not filtered. (Forrest, T. Vol. 1, 87)

Witness Lynn Moseley testified at the Lexington night hearing that because of the quality and smell of the water, she does not drink out of the spigot, and she will not give the water to her children or her pets. (Moseley, T. Vol. 1, 93) Witness Steve Weston, who owns or manages nine properties in the CWS territory, testified at the Lexington night hearing that because of the poor water quality he changes faucets and valves twice each year because they fill up with sand. (Weston, T. Vol. 1, 118) Witness Karen Lowrimore testified at the Lexington night hearing that her water smells and tastes badly,

she is unable to drink the water, she does not want her dogs to drink it, and she does not want to cook with it. (Lowrimore, T. Vol. 1, 125, 127) Additionally, she testified that her icemaker does not work properly as a result of the water quality. (Lowrimore, T. Vol. 1, 125, 127)

Witness Helen Smith testified at the Lexington night hearing that her water smells bad and that she has replaced showerheads and faucets as a result of the water quality. (Smith, T. Vol. 1, 139) Witness Jean O'Connor testified at the Lexington night hearing that due to the amount of chlorine in the water, she cannot drink the water and she cannot use her icemaker. (O'Connor, T. Vol. 1, 145) She purchases her water and ice at a grocery store. (O'Connor, T. Vol. 1, 145) Witness James Klugh testified at the Columbia night hearing that the water has a significant odor problem that affects the sale of homes in the community. (Klugh, T. Vol. 4, 665-66) Witness Claire Fort testified at the Columbia night hearing that because of the poor water quality and its smell, she filters her water and will not let her dog drink unfiltered water. Additionally, she noted that the water stains towels, bowls, sinks, and bathtubs. (Fort, T. Vol. 4, 697).

The Company presented testimony as to its improvements in the area of water quality. We are encouraged that the utility has agreed to investigate solutions to these problems, up to and including the possibility of changing water sources for areas with chronic issues such as Forty Love Point. However, the weight of customer testimony indicates to us that problems persist.

### **Sewer Problems**

Numerous CWS customers described their frustrations with blockages in the sewage lines and sewage backups. Witness Allen Nason testified at the Lake Wylie night hearing that the blockages result from the Company's failure to maintain its infrastructure by failing to "connect the main line of the house into the sewer." (Nason, T. Vol. 2, 165) This failure on the part of the Company resulted in a sewage problem for Mr. Nason, for which the Company accepted liability. (Nason, T. Vol. 2, 168) Mr. Nason also testified that the Company has no accurate map of its existing infrastructure in River Hills Plantation. (Nason, T. Vol. 2, 164) Witness Bartina Edwards testified that she suffered from sewage backup on three occasions whereby she dealt with the main line at her own expense. (Edwards, T. Vol. 2, 179).

### **Customer Service Problems**

Several customers expressed frustration with being unable to reach CWS's customer service representatives and having no local office within South Carolina to direct their complaints. Witness Mark Lynn testified at the Lexington night hearing that the Company has no local presence in South Carolina; bill payments are made to an address in Maine; and customer service representatives answer the phone in Altamonte Springs, Florida (Lynn, T. Vol.1, 59, ll. 6-23) Mr. Lynn also testified that he had been charged late fees because of the length of time it took for his bills to be received by the Company in Maine. (Lynn, T. Vol. 1, 60) Witness Kimberly Stammire testified at the Lexington night hearing that her water was cut off and she was charged a \$35 fee to

reactivate her service because her payment was four days late getting to Maine. (Stammire, T. Vol. 1, 106)

Witness Bartina Edwards, at the Lake Wylie night hearing, testified that her calls were not returned, and she was disconnected when she placed calls to customer service. (Edwards, T. Vol. 2, 178) Additionally, she testified that CWS shut off her water on three separate occasions when she had paid her bill on time. When she contacted the Company's customer service department, they could not tell her why her service had been terminated. (Edwards, T. Vol. 2, 179-80)

Witness Pam Horack testified at the Lake Wylie night hearing regarding the Company's poor customer service. (Horack, T. Vol. 2, 213-14) She contacted the Company to ask about having a second irrigation meter installed on her property. The customer service representative was unable to give her any information about her request and informed Ms. Horack that a company representative would come to her home, but no one ever came. Only after four phone calls to the Company did Ms. Horack receive any information regarding her meter inquiry. (Horack, T. Vol. 2, 214)

Witness Sharon Smith testified at the Lake Wylie night hearing that on several occasions the Company shut off her water service and never provided her with a boil water notice. (Smith, T. Vol. 2, 231-32) Witness Jay Moore testified at the Lake Wylie night hearing that the Company's customer service representative with whom he was speaking regarding an inaccurate bill stated that a company representative who comes to a customer's property to evaluate a problem cannot speak to the customer regarding the nature of the problem or its resolution. (Moore, T. Vol. 2, 262) Additionally, Mr. Moore

described an incident where water was running down Turtle Lane in the River Hills Plantation for three weeks before the Company remedied the problem. (Moore, T. Vol. 2, 263-64) Mr. Moore testified that multiple customers had called the Company to report the problem and that the customer service representative with whom he spoke was already aware of the problem.

### **Current Revenues**

ORS Witness Scott's Surrebuttal Audit Exhibit SGS-1 shows that the current schedule of rates and charges in effect for CWS yield a return on rate base of 6.50% after accounting and pro forma adjustments. According to Ms. Scott's Surrebuttal Audit Exhibit SGS-8, the rate of return on equity is 6.42% after accounting and pro forma adjustments. The Company's rebuttal witness, Ms. Weeks, arrives at slightly different figures, with the rates yielding an as adjusted return on rate base of 5.85% and an as adjusted rate of return on equity of 5.09% as shown on Exhibit KEW-1, Schedule C. In either case, the Company currently earns a positive rate of return.

## **V. CONCLUSIONS OF LAW**

1. The widespread and pervasive problems with regard to quality of service in this case are sufficient to support a denial of the Applicant's rate request.
2. Because the Applicant's current rates result in sufficient revenue to generate a positive rate of return sufficient to service its debt and provide a return to equity holders, the denial of the requested increase cannot be characterized as confiscatory and therefore is not violative of the Fifth and Fourteenth Amendment to the Constitution of the United States.

3. The Company shall continue to have the opportunity to earn an operating margin of 9.86%, a rate of return on rate base of 7.64% and a rate of return on equity of 9.40%, all of which were established in Order No. 2008-855.

IT IS THEREFORE ORDERED that the Applicant's request for increased rates and charges be DENIED.

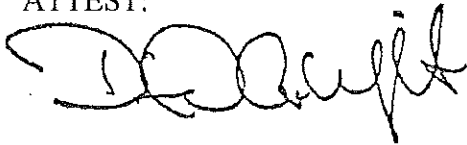
BY ORDER OF THE COMMISSION:



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John E. Howard, Chairman

ATTEST:



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David A. Wright, Vice Chairman

Commissioners **FLEMING** and **HALL**, dissenting:

We respect our fellow Commissioners in the majority who are of the view that this Commission is empowered to deny a petition for a rate increase entirely on the basis of poor customer service, even where the utility would otherwise be entitled to rate relief based upon objective accounting data. Indeed, we are most sympathetic to the affected ratepayers in this case, and just as they do, we also believe the level of service delivered to them by the utility has been unacceptable. However, we write separately in dissent, both because we interpret South Carolina law differently from our distinguished colleagues, and because we believe a different result in this case may have served the ratepayers better in the end.

We have been down this path before under virtually identical circumstances. In 2007, Utilities Services of South Carolina, Inc., which happens to be a sister company to the Applicant in this case, applied for a rate increase. In that case, just as we have here, the Commission held public hearings at which many customers testified as to virtually all of the same service problems that are presented in this case. We heard these complaints, and we were convinced that the Company deserved no rate increase at all. In Order No. 2008-96, issued on February 11, 2008, we unanimously denied USSC's request for rate increase in its entirety.

On March 28, 2011, the South Carolina Supreme Court issued its decision in *Utilities Services of South Carolina, Inc.*, Opinion No. 26952, 708 S.E.2d 755, 392 S.C. 96 (2011). In that case, the Supreme Court held, among other things, that "[t]he concerns raised at the public hearings were not sufficient to overcome the presumption of

reasonableness as to all of Utility's claimed expenditures. Thus, rather than denying Utility's rate application in its entirety, the PSC should have adjusted Utility's application to reflect only those expenditures the PSC determined should be passed on to consumers." We believe the state Supreme Court has thus, in so many words, held that poor customer service, without a specific showing that a utility has not incurred the expenses it claims, is not adequate legal justification to deny a rate increase necessary to recover the expenditures incurred by the utility.

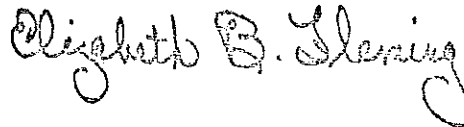
Based upon our reading of the Supreme Court's *USSC* decision, we believe the majority's decision denying the rate increase on the basis of poor service is very likely to be appealed. In Section 58-5-240(D) of the South Carolina Code, the South Carolina General Assembly authorized utilities appealing the orders of this Commission in rate cases to impose rate increases sought on appeal upon the filing of a surety bond in an amount adequate to ensure that customers would be refunded the increased amounts with interest in the event the appeal was unsuccessful. USSC posted such a bond and imposed its rate increase in the prior case. We believe that in this case, the utility (owned by the same parent company) will likewise post the required bond to permit it to impose increased rates while the appeal is pending. Thus, we believe any customer relief resulting from the majority's decision denying additional revenues is likely to be short-lived, since we believe a rate increase is forthcoming in any event through the probable application of a bond.

In its application Carolina Water Service, Inc. (CWS) requested a rate increase of \$2,232,408. CWS did reduce its reduce its requested rate increase to \$1,255,070 after

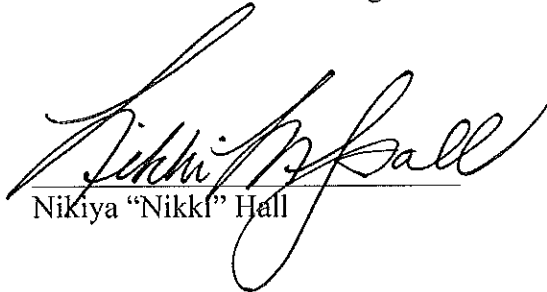


accepting certain accounting adjustments made by the Office of Regulatory Staff (ORS). The ORS proposed that we approve an operating margin of 12.57%. This would have resulted in a revenue increase of \$501,133 and a return on equity of 9.02%. This return on equity figure would have recognized the utility's poor level of service in that it was significantly lower than the 9.4% figure currently in place pursuant to the prior rate order. Under the ORS's proposal, a 7,000-gallon-per-month household receiving both water and sewer service would have received a combined increase of \$5.01 per month. We believe that the proposal by the ORS represented the lowest possible increase consistent with current South Carolina case law and the evidence in the record of this case, and it may well turn out to have been more favorable to the customers than the rates the utility will shortly impose under bond pending the appeal of this matter.

Respectfully, we therefore dissent.



Elizabeth B. "Lib" Fleming



Nikiya "Nikki" Hall